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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/081,953	02/22/2002	William J. Hennen	2820-4428.2US	6427
24247	7590	08/17/2007		
TRASK BRITT P.O. BOX 2550 SALT LAKE CITY, UT 84110			EXAMINER CHEN, STACY BROWN	
			ART UNIT 1648	PAPER NUMBER
			MAIL DATE 08/17/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/081,953	HENNEN ET AL.	
	Examiner	Art Unit	
	Stacy B. Chen	1648	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 and 18-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 and 19-23 is/are rejected.
- 7) ☒ Claim(s) 18 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicant's after-final amendment filed July 16, 2007 is acknowledged and entered. Claims 1-16 and 18-23 are pending and under examination. Upon further consideration of the prior art of record, a new ground of rejection is set forth in this non-final Office action. The finality of the previous Office action is withdrawn.

Information Disclosure Statement

2. In Applicant's remarks of the submission filed July 16, 2007, Applicant indicates that a supplemental IDS was filed March 14, 2002. Applicant has not received an indication that this supplemental IDS has been considered. The Office regrets that it does not have a copy of this IDS on file, and so the document(s) cited therein has not been considered. Applicant is requested to file a copy of the IDS filed March 14, 2002.

Response to Amendment

3. The following rejections are withdrawn in view of Applicant's amendment:
- The rejection of claims 1-3, 7-16 and 18-22 under 35 U.S.C. 102(b) as anticipated by Tokoro (US 5,080,895) is withdrawn.
 - The rejection of claims 1-3, 7-13, 15 and 18-23 under 35 U.S.C. 102(b) as anticipated by Lee (US Patent 5,367,054) is withdrawn.
 - The rejection of claims 4-6 under 35 U.S.C. 103(a) as obvious over Tokoro in view of Kirkpatrick (US 5,840,700) is withdrawn.

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- The rejection of claims 4-6 and 14 under 35 U.S.C. 103(a) as obvious over Lee, as applied to claim 1, in view of Kirkpatrick (US 5,840,700) is withdrawn.

Claims Summary

4. The claims are drawn to a method for causing a treated animal to elicit a T-cell mediated immune response, comprising administering to the animal a quantity of a composition including an extract of an egg obtained from a source animal, said extract comprising transfer factor, generated by a source animal in a T-cell mediated immune response to at least one antigenic agent. The transfer factor is purified away from other proteins or peptides of at least one egg having molecular weights of greater than about 8,000 Daltons, and the transfer factor is present in a concentration greater than that present in the egg.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-16 and 19-23 are rejected under 35 U.S.C. 102(e) as being anticipated by

Dopson (PGPub 2002/0044942A1, "Dopson", published April 18, 2002, with priority to provisional application 60/233,400, filed September 18, 2000).

Dopson's disclosure is directed to a process for producing transfer factor and using the transfer factor in topical compositions, edible compositions, dietary supplements and pharmaceutical or veterinary compositions, via parenteral, subcutaneous or intramuscular injection, for the prevention or treatment of a disease associated with a selected antigen (abstract, paragraph [0064], and claim 19). Dopson teaches that transfer factor does not induce an antibody response, rather a cellular response (paragraph [0007]). The method of obtaining transfer factor comprises immunizing a female bird with at least one antigen so that the bird develops immunity to the at least one antigen, and collecting eggs laid by the female bird (Dopson, claim 1). In the specification of Dopson, the female birds are preferably domestic chickens (abstract), and a flowchart of the various methods of producing transfer factor are outlined in Figure 1. Hens are immunized with any variety of pathogens including Epstein-Barr virus and hepatitis B (Dopson, paragraphs [0036]-[0037]). Eggs are collected after immunity is developed, which depends on the age and variety of chicken, among other factors (Dopson, paragraph [0039]). Transfer factor is disclosed as being a dialyzable material having molecular weights of approximately 3-6 kD (Dopson, paragraph [0007]). Dopson teaches that during purification, the supernatant may be passed through a semi-permeable membrane which does not allow the passage of molecules above a certain molecular weight, typically 10 kD or thereabouts (paragraph [0047]). Therefore, in view of Dopson's disclosure, the claimed invention is anticipated.

5. The following portions of the MPEP (715.05 and 37 CFR 41.202, see especially 41.202(d)) are cited to assist Applicant in their response to this rejection. Notably, a 131

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declaration will not be sufficient to overcome this rejection because the subject matter at issue is mostly in the claims of the PGPub.

715.05 U.S. Patent or Application Publication Claiming Same Invention [R-5]

When the reference in question is a noncommonly owned U.S. patent or patent application publication claiming the same invention as applicant and its publication date is less than 1 year prior to the presentation of claims to that invention in the application being examined, applicant's remedy, if any, must be by way of **37 CFR 41.202** instead of **37 CFR 1.131**. If the reference is claiming the same invention as the application and its publication date is less than 1 year prior to the presentation of claims to that invention in the application, this fact should be noted in the Office action. The reference can then be overcome only by way of interference. See **MPEP Chapter 2300**. If the reference is a U.S. patent which claims the same invention as the application and its issue date is more than 1 year prior to the presentation of claims to that invention in the application, a rejection of the claims of the application under **35 U.S.C. 135(b)(1)** should be made. See *In re McGrew*, 120 F.3d 1236, 1238, 43 USPQ2d 1632, 1635 (Fed. Cir. 1997) (The court holding that application of **35 U.S.C. 135(b)** is not limited to *inter partes* interference proceedings, but may be used as a basis for *ex parte* rejections.). The expression "prior to one year from the date on which the patent was granted" in **35 U.S.C. 135(b)** includes the one-year anniversary date of the issuance of a patent. See *Switzer v. Sockman*, 333 F.2d 935, 142 USPQ 226 (CCPA 1964).

If the reference is a U.S. application publication under **35 U.S.C. 122(b)**, or a WIPO publication on an international application filed on or after November 29, 2000, which claims the same invention as the application being examined and its publication date is more than 1 year prior to the presentation of claims to that invention in the application being examined, a rejection of the claims of the application (being examined) under **35 U.S.C. 135(b)(2)** should be made only if the application being examined was filed after the publication date of the reference.

37 CFR § 41.202 Suggesting an interference.

(a) *Applicant*. An applicant, including a reissue applicant, may suggest an interference with another application or a patent. The suggestion must:

(1) Provide sufficient information to identify the application or patent with which the applicant seeks an interference,

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- (2) Identify all claims the applicant believes interfere, propose one or more counts, and show how the claims correspond to one or more counts,
 - (3) For each count, provide a claim chart comparing at least one claim of each party corresponding to the count and show why the claims interfere within the meaning of § 41.203(a),
 - (4) Explain in detail why the applicant will prevail on priority,
 - (5) If a claim has been added or amended to provoke an interference, provide a claim chart showing the written description for each claim in the applicant's specification, and
 - (6) For each constructive reduction to practice for which the applicant wishes to be accorded benefit, provide a chart showing where the disclosure provides a constructive reduction to practice within the scope of the interfering subject matter.
- (b) *Patentee*. A patentee cannot suggest an interference under this section but may, to the extent permitted under § 1.99 and § 1.291 of this title, alert the examiner of an application claiming interfering subject matter to the possibility of an interference.
- (c) *Examiner*. An examiner may require an applicant to add a claim to provoke an interference. Failure to satisfy the requirement within a period (not less than one month) the examiner sets will operate as a concession of priority for the subject matter of the claim. If the interference would be with a patent, the applicant must also comply with paragraphs (a)(2) through (a)(6) of this section. The claim the examiner proposes to have added must, apart from the question of priority under 35 U.S.C. 102 (g):
- (1) Be patentable to the applicant, and
 - (2) Be drawn to patentable subject matter claimed by another applicant or patentee.
- (d) *Requirement to show priority under 35 U.S.C. 102(g)*. (1) When an applicant has an earliest constructive reduction to practice that is later than the apparent earliest constructive reduction to practice for a patent or published application claiming interfering subject matter, the applicant must show why it would prevail on priority.
- (2) If an applicant fails to show priority under paragraph (d)(1) of this section, an administrative patent judge may nevertheless declare an interference to place the applicant under an order to show cause why judgment should not be entered against the applicant on priority. New evidence in support of priority will not be admitted except on a showing of good cause. The Board may authorize the filing of motions to redefine the interfering subject matter or to change the benefit accorded to the parties.
- (e) *Sufficiency of showing*. (1) A showing of priority under this section is not sufficient unless it would, if un rebutted, support a determination of priority in favor of the party making the showing.
- (2) When testimony or production necessary to show priority is not available without authorization under § 41.150(c) or § 41.156(a), the showing shall include:

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- (i) Any necessary interrogatory, request for admission, request for production, or deposition request, and
- (ii) A detailed proffer of what the response to the interrogatory or request would be expected to be and an explanation of the relevance of the response to the question of priority.

Conclusion

No claim is allowed. Claim 18 is objected to for depending from a rejected claim.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stacy B. Chen whose telephone number is 571-272-0896. The examiner can normally be reached on M-F (7:00-4:30). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell can be reached on 571-272-0974. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Stacy B. Chen 8/16/07

*Stacy B. Chen
Primary Examiner
TC1600*